LOCAL GOVERNMENT IN ENGLAND.

THE character of the English system of local government was fixed at the time of the conquest of England by the Normans. What Saxon institutions remained were so changed as to be simply reminiscences of a time that was past, and exercised but little influence on the future. William the Conqueror's conception of his relations to his new dominion is of great importance, since on it was based the system of administration that he founded. He believed that he held the country as the devisee and the legitimate successor of Edward the Confessor.[1] In this claim he was supported by the pope; and the fact that he had to back up his claim by force altered in no way his position in the law. The result of such a claim, if successfully prosecuted, was that every Anglo-Saxon who resisted it was deemed guilty of treason and his property was forfeited. "Those who were willing to acknowledge William were allowed to redeem theirs, either paying money at once or giving hostages for the payment."[2] In this way most of the landed property in the kingdom came into the possession of the Conqueror, who then granted it out again to his adherents and to the Anglo-Saxons who decided finally to cease resistance to his claims.[3] This procedure was, of course, not calculated to produce peaceful relations between the two national elements of the population. All classes were indeed reduced to the most complete submission to their sovereign. But Norman was hated by Saxon and despised him in return. It became impossible, as Gneist points out,[4] to conduct the government on the old plan while these feelings existed. Little freedom could be granted to the localities if every matter in their jurisdiction

[1] Stubbs, Const. Hist., vol. i, p. 257, with authorities cited.

[2] *Ibid.*, p. 259, note 1.

[3] *Ibid.*, p. 260.

[4] Gneist, Selfgovernment, Communalverfassung und Verwaltungsgerichte, S. 14.

was to be decided from race motives. Some new system of government must be established by means of which the peace might be preserved and the king might stand as an impartial arbiter between the conflicting race elements of the nation. Impelled by these reasons as well as by his naturally despotic turn of mind, William districted his new kingdom, — using in the main the old divisions that had come down from Anglo-Saxon times, — and placed in each district an officer on whom he could rely to enforce his orders and carry out his plans. Little power was given to the people of the localities; most governmental functions were entrusted to the royal officers.

Such was the character of the Norman system of local government imposed upon the old Anglo-Saxon autonomy; and such is the character which the English system of local government has preserved to a comparatively recent time. This fact gives us the clue to the method of treating the subject: it must be studied from the standpoint of officers rather than from that of districts. I shall take up the different officers in their historical order; and I shall begin with the sheriff, who was the most important officer in the early Norman system of local government.

History of the Offices.

I. *The Sheriff.* In each of the old shires or counties, whose boundaries had been fixed during the Anglo-Saxon period and were, for the most part, identical with those of the old Anglo-Saxon kingdoms,[1] was placed an officer, appointed and removed by the king, called the *vice-comes*. This officer resembled in many ways the Anglo-Saxon shire-reeve (*scyr-gerefa*) and finally came to be known by the English name of sheriff. This office was regularly appointive, and has remained so to the present day; the acceptance of the appointment has from time immemorial been obligatory, and the term of office is for a year.[2] But any one who has served for one term is exempt from service for the next three years.[3] Almost the only practical qualification for the office is that

[1] Gneist, Selfgovernment *etc.*, S. 77. [2] 14 Edw. III, c. 7. [3] 1 Richard II, c. 11.

the appointee have a sufficiently large landed estate in the county to ensure his pecuniary responsibility for his good conduct.

Originally the functions of the sheriff were very extensive — so extensive indeed as to make him the viceroy in the county for which he was appointed in all matters relating to the financial, military and judicial administration.[1] We may, in accordance with our modern terminology, classify his original functions as judicial and administrative. His judicial functions were discharged in the courts of the county — the county court proper and the court known as the sheriff's tourn.

The county court, when acting under the direction of the sheriff, was originally by far the most important authority in the county. Stubbs says that it

> met twice a year under the sheriff or his deputy, and was still competent to declare folk-right in every suit. . . . It had a civil as well as a criminal jurisdiction as before [*i.e.*, in the Saxon period], although the management of the pleas of the crown on the one side, and the interference by royal writ on the other, must have materially affected its independence.[2]

But the importance of the county court together with that of the sheriff gradually diminished. The *iter* of 1194 formed, or at least defined, the grand jury, and forbade the sheriffs to act as itinerant justices in their own shires;[3] while the consolidation of the judicial power in the hands of the itinerant justices and in the *curia regis* limited very much the power of the sheriffs.[4] In 1215, Magna Charta forbade the sheriff to hold pleas of the crown.[5] Also the provision, by the *iter* above referred to, of other officers, the coroners, who were given concurrent power to attend to the pleas of the crown, was another limitation on the power of the sheriff.

The sheriff's tourn grew out of the county court, as Blackstone says, "for the ease of the sheriff," and was simply the

[1] Stubbs, Const. Hist., vol. i, p. 276.
[2] *Ibid.*, p. 394.
[3] *Ibid.*, p. 505.
[4] *Ibid.*, p. 606.
[5] Art. 24. For the general decline of the county court, see also Blackstone, IV, 37.

court leet or petty criminal court which the sheriff, in his turn or circuit, held twice each year in each respective hundred of the county. The gradual development of this court was another cause for the decline of the county court. Its original purpose was to view the frankpledge.[1] Besides this it was a minor police court.[2] But the tourn met with the same fate as the county court. Magna Charta prohibited the sheriff's tourn, as well as the sheriff and county court, from hearing and determining important criminal matters,[3] leaving to the sheriff's tourn simply a police jurisdiction, which was finally assumed by the justices of the peace in quarter and special sessions.[4]

This slight historical review is sufficient to show that the judicial functions of the sheriff have one by one been transferred to other officers or authorities, and that all that is left of his great powers can be classed as administrative functions.

Originally the sheriff had much greater administrative powers than at present. He was the head of the county militia; but he has lost all military powers as a result of a reorganization of the county militia under the lord lieutenants and deputy lieutenants. He was also chief of police in the county; but most of his police powers have been given to the justices of the peace and their subordinate constabulary. He is still, however, regarded as one of the royal conservators of the peace; and in such capacity he may arrest all persons guilty of breaking the peace of the county, may bind any violent person over to keep the peace, and as a final resort may call out the *posse comitatus* to quell an uproar. But he rarely if ever does this, as the new constabulary and the militia are amply sufficient for this purpose. He also had charge of the royal finances, and is still, in theory, the king's bailiff and has to see that the fiscal rights of the king are preserved; but through the great change in the financial system, since the time when the office of sheriff was established, almost nothing

[1] In accordance with an old Anglo-Saxon and Norman custom, the freemen of the liberty were all mutually pledges for the good behavior of each other.

[2] Blackstone, IV, 273. [3] Art. 24.

[4] For example, see statute 1 Edw. IV, c. 2, which distinctly provides that certain parts of the jurisdiction of the sheriff's tourn are to be exercised by the quarter sessions.

is left of these functions save the taking possession of confiscated property and of strays. The only really important functions now discharged by the sheriff have reference to elections for coroners and members of Parliament, and to actions in the higher courts of the county, of which he is a ministerial officer. Most of these duties are performed by subordinate officers, for whose actions, however, the sheriff is responsible.[1]

The period during which the sheriff exercised his most important functions extended from the Conquest to the reign of Richard II, and may be regarded as the most flourishing period of the Norman system of prefectoral administration. The king was supreme at the time and the government was personal to the last degree.[2] During the greater part of this period there was no Parliament to restrain the actions of the king; and to this complete absolutism is due the fact that England was consolidated into a nation so much sooner than any of the peoples of the continent. The subjugation of the English people was so complete that there was little opportunity for the development of that feudal *régime* which delayed so long the formation of a national feeling in France and Germany. But with the complete welding together of the various localities and classes into one nation came very soon the demand on the part of that nation for some share in the administration of the government. In the domain of local government this demand was satisfied by the creation of new offices. The first of these was the office of coroner.[3]

II. *The Coroner.* The coroners were originally chosen from among the knights of the shire as assistants to the sheriff, but with a certain control over him. It is supposed that they were originally appointed by the king, but that the right of presentation which the county courts possessed developed into a right of election. However that may be, it is certain that from a very early time the coroners were elected by the county

[1] Blackstone, I, 340 *et seq.* [2] Stubbs, Const. Hist., I, 338.

[3] Gneist, Selfgovernment, S. 96. It must be admitted, however, that the origin of this office is somewhat obscure. Blackstone (I, 346–349) considers it to be as ancient as that of the sheriff. But see Stubbs, Const. Hist., I, 505, whose description of the origin of the office seems to agree with Gneist's.

courts, upon a writ *de coronatore eligendo* issued by the central government to the sheriff, who then called the county court together for this purpose.[1] The office of coroner was the only important office in the old English system of local government that was filled by election. The most important business of the coroners at present is the investigation of cases of sudden death. This is governed by the statute 4 Edw. I, c. 2, *de officio coronatoris*. Their other police functions, *i.e.*, the keeping of the pleas of the crown, were taken from them by Magna Charta, article 24. It should be added that the coroner is also a ministerial officer, and performs the duties of the sheriff in case that officer is incapacitated for suspicion of partiality. There are, in all, from four to six coroners in every county.

III. *The Constable.* The office next in date of creation is that of constable. Blackstone[2] derives this office, as it existed in latter times in England, from the great office of lord high constable, which was practically abolished at the time of the attainder of Stafford, duke of Buckingham under Henry VIII. The derivative office dates back to the statute of Winchester,[3] which directs that two constables in every hundred shall inspect all matters relating to arms and armor. They were originally appointed by the courts leet; but afterwards, when the justices of the peace supplanted the old courts leet, they were appointed by the justices.[4] At first their functions had to do with the militia organization and they were officers of considerable importance, but they soon lost their military character and became simply officers for the keeping of the peace. Their original independence was lost when they became the appointees of the justices; they were obliged to act under the direction of these officers.

IV. *The Justice of the Peace.* The officers above described, the sheriff and constable — or, in particular districts with charters of their own, other officers of similar character, — conducted the business of government satisfactorily for a long time; but

[1] This election is now regulated by the statute 7 & 8 Vic. c. 92.

[2] Vol. i, p. 355.

[3] 13 Edw. I, c. 6.

[4] Blackstone cites statute 14 & 15 Car. II, c. 12, and Salk. 150.

as the country grew more populous and the business of government more difficult, the sheriff's tourn, the main police court, became unequal to the task imposed upon it, and a new office was established, which finally became the most important in the entire English system, namely, that of justice of the peace. The origin of this office is not quite clear. Blackstone says:

> When Queen Isabel, the wife of Edward II, had contrived to depose her husband by a forced resignation of the crown, and had set up her son Edward III in his place, this, being a thing then without example in England, it was feared would much alarm the people; especially as the old king was living, though hurried about from castle to castle, till at last he met with an untimely death. To prevent therefore any risings or other disturbance of the peace, the new king sent writs to all the sheriffs in England, the form of which is preserved by Thomas Walsingham (Hist. A.D. 1327), giving a plausible account of the manner of his obtaining the crown, to wit: that it was done *ipsius patris beneplacito*, and withal commanding each sheriff that the peace be kept throughout his bailiwick, on pain and peril of disinheritance, and loss of life and limb. And in a few weeks after the date of these writs, it was ordained in Parliament (Stat. 1 Edw. III, c. 2) that for the better maintaining and keeping of the peace in every county, good men and lawful, which were no maintainers of evil, or barretors in the country, should be assigned to keep the peace. . . . But still they were only called conservators, wardens, or keepers of the peace, till the statute 34 Edw. III, c. 1, gave them the power of trying felonies; and then they acquired the more honorable appellation of justices (Lamb. 23).[1]

Gneist, on the other hand, regards the appointment of the justices as the result of the complete breaking down of the Anglo-Saxon and Norman method of attempting to keep the peace by means of the frankpledge. This custom became so burdensome that, soon after the adoption of Magna Charta, two statutes, that of Merton[2] and that of Marlborough[3] released the most important persons of the population from the view of the frankpledge, that is, the revision of the lists of the responsible inhabitants, and made practically nugatory the old system of police. The appointment of the constables a few years later[4]

[1] Blackstone, I, 350.
[2] 20 Henry III, c. 10.
[3] 52 Henry III, c. 10.
[4] 13 Edw. I, c. 6.

was an attempt to form a new police system in which there should be officers with the power of arrest who should be responsible for the preservation of the peace. This plan was not at all successful. Experience showed that the preservation of good government demanded the presence in all the localities of permanent officers of sufficient dignity to command the respect of the inhabitants of the district. The reigns of the three Edwards were a time of experiments in governmental organization, which varied between centralization and decentralization,[1] until finally the statute of 34 Edward III, c. 1, provided for the appointment in all of the counties of these justices of the peace. Two years later, as the result of a petition of the Commons, a clause was inserted in the commissions of the justices that they should meet four times a year in common sessions for the county. The scanty knowledge of the law possessed by most of the justices led the Commons again to petition, in the reign of Richard II, that at least two persons learned in the law should be compelled to act in the consideration of all felonies. The answer to this petition was the statute of 17 Richard II, c. 10, which distinguished two classes of justices, those learned and those not learned in the law. The former, to the number at least of two, must be present and act in felonious cases, and, from the wording of the commission which was issued to them, became known as the justices of the *quorum*. As, however, the knowledge of the law and general information spread among the higher classes from which the justices were chosen, the custom arose of appointing all the justices to the quorum, as is the case at present.[2] The number of the justices in any county does not seem to be limited, though it was so at first. They are all appointed by the crown, and with very few exceptions have been so appointed from the origin of the office; but a property qualification of a considerable amount has always been necessary. The office was originally obligatory, but service as justice was paid by means of a

[1] It was during this time that the office of sheriff was made elective. But this failed of good results. See 28 Edw. I, c. 8, and 9 Edw. II.

[2] Gneist, Selfgovernment, S. 103–4.

per diem allowance. Now it seems not to be obligatory, and for many years it has been unsalaried. The term of office is practically for life, though in theory a justice of the peace may at any time be dismissed from office by the central government.

These officers it was who gradually came to discharge all the police and administrative functions that were in old times discharged by the sheriff and the courts of the county. While the sheriff was perhaps the best hated officer that England ever possessed, the justices seem to have been popular from the very outset. Statute after statute enlarged their powers until they became by far the most important of all the officers in the English local government system, discharging both civil and criminal judicial functions and having the greatest influence over the entire local administration. A change in the militia system in the time of the Tudors greatly increased their power, since the lord lieutenants and deputy lieutenants then provided for[1] were personally identical in most cases with the justices of the peace. The lord lieutenant was at the same time the chief justice of the peace and *custos rotulorum*, or keeper of the records, and nearly all the deputy lieutenants were justices of the peace. The functions discharged by the justices under this arrangement have since been lost. During the Tudor period another change took place, which also added to the importance of the justices of the peace: they were entrusted with supervisory powers over the new communal administration that sprang up at this time in connection with the church parishes. The needs of the parish churches had from a very early time led to the collection of voluntary contributions from those persons whose means allowed them to contribute. These contributions, coming with great regularity, finally developed into a tax; and it became customary for the heads of families to assemble periodically in the vestry of the church to decide upon the purposes to which the money raised should be applied. At these meetings the persons who were to have charge of the temporalities of the parish church — the church-

[1] Statute of 4 & 5 Philip and Mary, c. 2, 3; afterwards changed by a statute of 13 Car. II, c. 1, 6. See Hallam, Const. Hist., vol. ii, p. 133 and p. 313, note 3.

wardens — were elected. After the Reformation, a canon of the church (canon 89) provided that one of these church-wardens should thereafter be chosen by the pastor, while the other should be elected by the vestry. On these church-wardens were bestowed many police functions which we should expect to find in the hands of the constables, but which either had not been given to these officers, or had been taken from them in consequence of the degeneration of the office.[1] The most important administrative function of the church-wardens was the care of the poor. The suppression, in the reign of Henry VIII, of the religious houses and congregations, which had previously assumed the care of the poor, necessitated an organization of charity by the state. Statutes of 27 Henry VIII, c. 55, and 43 Elizabeth, c. 2, compelled each parish to support its poor, and made the church-wardens overseers of the poor *ex officio*. Two or three other overseers were to be appointed in each parish by the justices of the peace. About the same time it was seen that the old method of keeping up the highways was quite inadequate. The parishes were responsible for their maintenance, and the highways were kept (or were supposed to be kept) in good condition by the imposition of fines and penalties upon any parish that did not do its duty. But there were no officers whose duty it was to see that the roads were in good condition, and the absence of all supervision was found very harmful. Accordingly the statute of 2 and 3 Philip and Mary, c. 8, provided for the creation of surveyors of highways. These officers were at first elected by the constables and church-wardens, but were afterwards appointed in each parish by the justices[2] and were made subject to their direction. These innovations gave to the parishes an administrative importance that they never had had before, and at the same time increased the power of the justices of the peace, in that the new officers were in many cases their appointees and were in all cases subject to their direction. A further and most important change in the position of the justices was that, in their courts of quarter sessions, they

[1] Gneist, Selfgovernment, S. 40.

[2] 13 Geo. III, c. 78.

became the county administrative authority, usurping the position of the old county court.

The period in which the justices performed these functions forms the second stage in the history of the local government of England and lasted from the beginning of the reigns of the Tudors down to the beginning of the present century. The administration was much more decentralized than under the old Norman prefectoral system. All the officers were chosen in the localities which they governed. Most of them, it is true, were appointed, directly or indirectly, by the central government and were dismissed by it. But the fact that they received no salary, although service, as a rule, was obligatory and very arduous, made the *personnel* of the administration after all very independent, and kept it from falling into bureaucratic ways. The system really secured a very high degree of local self-government. It was conducted in accordance with laws of Parliament which often descended into the most minute details. In order that these laws might be observed, there was given to the courts a most extended control over the officers; especially over the justices of the peace, nearly all of whose actions might be reviewed by the judges of the royal courts by means of the common law writs of *certiorari*, *mandamus*, and prohibition

The system was not representative — not, at least, in the modern sense; and when its financial side became more emphasized, on account of the great growth of the local taxes through the increase of the poor rate, it was thought that some voice as to the amount of the taxes to be paid should be given to the taxpayers. This consideration led to the organization of elective boards, the establishment of which has wholly revolutionized English local government.

The Poor Law Amendment Act.

This brings us to the great reform movement which dates approximately from the Reform bill of 1832. The movement was in great part due to social changes. The application of steam-power to manufactures and the very general introduction

of machinery revolutionized industrial methods, massed large populations in the cities, and gave to the possessors of personal property — that is, the commercial and industrial classes — an importance that they never had had before. This change in the relative importance and power of the property-owning classes led first to a change in the method of representation in Parliament — a change which was brought about by the celebrated Reform bill of 1832. By this bill the balance of political power was taken away from the nobility and gentry and given to the middle classes. As the system of local government which the English were at this time enjoying gave most of the power in the localities to the nobility and the gentry, it was only natural that the new political masters sought to discover some plan of local government by which their local influence might be increased.

Another reason for the change which followed was the necessity of wide-reaching reforms. The poor rates had risen to an enormous sum in the years immediately preceding 1832; and the anxiety of the authorities everywhere to throw the burden of supporting the poor on some other locality than their own had led to a complicated law of settlement which was totally at variance with the needs of an advancing industrial society. But the necessary reforms could only be realized by the establishment of a uniform system of administration. This implied a central control such as had not heretofore existed. In theory, the justices of the peace were subject to the guidance of the central government, and the central government could dismiss them from office if they disobeyed its instructions. But the high social position of the justices made it a delicate matter for the central government to send instructions to them, and even if such instructions were issued it was extremely difficult to enforce them. The threat of dismissal from office had no terrors for the average justice of the peace. Dismissal involved no pecuniary loss, since the justices received no pay. It was therefore no punishment, but simply relief from arduous and exacting duties. Hence the dismissal of a justice of the peace is rarely met with in later English history; and the

power to send the justices instructions became finally a useless prerogative.

For these reasons one of the first resolutions passed by the new Parliament provided for a thorough investigation of the administration of the poor law. In 1833 the celebrated Poor Law commission was appointed and began its work. The result of this work was a report, published in 1834, which has been described as "perhaps the most remarkable and startling document to be found in the whole range of English, perhaps indeed of all, social history."[1] The plans for reform advocated in this report, and finally adopted in the Poor Law Amendment act of 1834, involved the following political results:

I. *Representation.* The tax-payers are represented by boards of elected "guardians." Each board has the care of the poor-law administration, as regards the raising of rates and the granting of poor relief in its district. The new districts, the "unions," are much larger than the old, embracing as a rule several parishes.

II. *Voluntaryism.* Another change is the introduction in the local government system of the principle of voluntaryism and paid service, instead of the historic English principle of compulsory unpaid service. No obligation to serve is laid upon the elected guardians, and all the actual work is performed by salaried subordinates who are paid out of the poor rates. This change is a result of the change in the social elements composing the board of guardians. All the justices residing in the union are *ex officio* guardians; but the difference of social position between this class and that of the elected guardians has made it difficult for them to work together. The result is that the justices have left the poor-law administration wholly in the hands of the elected members of the board. These elected members have, as a general thing, other business to attend to and cannot, or at least think that they cannot, spare the time to attend to the details of the work imposed upon them by their position. They prefer, by a slight increase of the rates, to relieve themselves of these arduous duties. All

[1] T. W. Fowle, The Poor Law (1881), p. 75.

that the guardians really do is to attend to the raising and expending of the money necessary for the administration of the law. Only exceptionally conscientious guardians undertake the actual distribution of relief.

III. *Central Control.* The last point to be noted is the introduction of a most extended central control over all the acts of the guardians and of their subordinates. There were several reasons for the introduction of this control. In the first place, it was felt that some method must be devised to restrain that local selfishness which had been one of the greatest evils of the old system. If, under the new system, a locality show a desire to escape any of the burdens that are imposed upon it by the law, the central control can hold it to the performance of its duty. In the second place the new system does not offer the same guaranties as the old for the integrity and intelligence of the officers. Under the old system, as a rule, the justices of the peace — the most prominent men of the county — either did the work themselves, or had it done under their immediate personal direction; under the new system the detail-work of administration is entrusted to salaried subordinates of the boards of guardians. A third reason for the establishment of a central control has already been indicated, namely, the necessity of uniform administration.

As the needs of English society have increased, new administrative agencies have been demanded and devised for their satisfaction; and these new agencies have been organized on the same lines as the poor-law administration. The result of these changes has been to give England a dual system of local government. The old system of local government by the justices of the peace still exists, and is of the greatest importance in the county administration and in all police matters; but by its side we find elected boards acting under the impulsion and control of the central authorities at London. It is therefore necessary, in describing the existing local government of England, to examine separately each of these different systems, to sketch the functions of the various authorities in each, and to indicate the inter-relations of the old system and the new. I

shall first describe the governmental functions of the justices of the peace.

The Present Position of the Justices of the Peace.

The functions of the justices of the peace at the present time are of two kinds: judicial and administrative. While the latter class of functions alone properly falls within the scope of the present investigation, it is necessary, in order to come to any understanding of the position which the justices still occupy in the English system, first to indicate their judicial duties.

I. *Judicial Functions.* We have seen that the justices were originally appointed as conservators of the peace. As conservators of the peace, they were from the earliest times what in this country we should call police judges. In this capacity their duties were from the beginning, and are now, of three distinct kinds. (1) They bind over all disorderly persons to keep the peace. (2) They act as the preliminary investigators of all crimes, even of felonies. In the performance of this duty, they have the right to issue writs of apprehension against any one who is suspected of having committed a crime. (3) Acting singly, or in petty and special sessions, they convict of petty offenses — commonly without a jury. Acting with a jury, and in the courts of general and quarter sessions when all the justices of the county meet together, they form the lowest criminal court and act as an appellate court in police cases. As a general thing, where the justice of the peace acts singly, the cases are purely police cases; while the cases tried in the courts of quarter sessions are often of a criminal nature.

In the exercise of these judicial functions the justices of the peace really act, in many cases, as administrative officials. The police cases which come before them are frequently administrative cases; that is, the matters dealt with are of an administrative character. English administrative law is highly *specialized:* its rules are brought, to a great extent, into the form of direct commands to the people, to do or to refrain from doing particular things. These commands are enforced by penalties;

and the exaction of the penalties is entrusted to the courts.[1] The result of this specialization of the administrative law, this formulation of its rules as direct commands, has been an enormous extension of the powers of the English justices of the peace as police judges.

Besides these cases, in which the jurisdiction of the justices is judicial in form but administrative in effect, there is a further class of cases in which their action is more obviously administrative. Not all the laws whose execution is entrusted to the justices of the peace can be reduced to the form of simple commands. Certain matters must be left to their discretion. Thus it has been left to them to decide the questions of law and fact that arise in connection with removals under the poor law, nuisances, the assessment of local taxes, *etc.* In these matters the justice acts otherwise than in the foregoing cases. His decision takes the form, not of a conviction of a violation of the law, followed by the imposition of the proper penalty, but of an order, commanding that that be done which is proper in the premises. Here it will be seen that the justice acts rather as an administrative officer than as a police judge. But the analogy between the two sets of cases is so strong that they may well be classed together.

It should be noted that the justices of the peace have also a sort of a civil jurisdiction over such matters as the relations between master and servant and between master and apprentice.[2]

In many of the cases above set forth, it has long been necessary for two justices to act together; and the Summary Jurisdiction act of 1879[3] requires such concurrent action in almost all cases. In consequence of this and of previous acts, and by the practice of the justices, it has come about that their judicial business is commonly attended to when they meet for

[1] For further explanation, see "The Executive and the Courts, or Judicial Remedies against Administrative Action," POLITICAL SCIENCE QUARTERLY, December, 1886.

[2] *Cf.* any of the various manuals of the duties of the justices of the peace, *e.g.*, that of Burns. See also W. K. Wigram, The Justices' Note Book, and Gneist, Self-government, S. 217, 337.

[3] 42 & 43 Vic. c. 49.

special sessions, in the petty sessional divisions of the county established for this purpose.[1]

Though all the justices are, in principle, competent to act in any part of the county in all matters, it is the custom for each to elect, for the discharge of his petty judicial functions, a particular (sessional) division of the county, and to confine his action in such matters to the division chosen.[2]

II. *Administrative Functions.* The purely administrative functions of the justices of the peace are discharged in the courts of special and quarter sessions.

1. *Special Sessions.* In the courts of special sessions, their functions touch almost all branches of the administration, but may be classed under two heads. In the first place, the appointment of various local officers is either entirely in their hands or at least subject to their control. Thus, by the poor law of Elizabeth,[3] they appoint annually all of the overseers of the poor, with the exception of the *ex officio* overseers, who, it will be remembered, are the church-wardens. It is said, however, that the right of presentation possessed by the vestries of the various parishes has developed practically into a right of election, since the justices almost invariably appoint the persons whose names are first on the list presented to them by the vestries.[4] The justices also appoint the unsalaried constables, and dismiss them from office.[5] The examiners of measures and the surveyors of highways were formerly appointed in the special sessions; but the former officers are now appointed by the county authority, while the latter are elected, or appointed by the highway boards.[6] In the second place, the justices of the peace, in special sessions, have many duties to perform which affect directly the matters of administration rather than the personnel. Thus they have special duties to perform with reference to the highways, such as diverting or closing a road; and they act as a supervisory authority over the entire highway administration.[7] The justices

[1] Wigram, The Justices' Note Book, ch. 2. [2] *Ibid.*, p. 2. [3] 43 Eliz. c. 2.
[4] Gneist, Selfgovernment, S. 345; Chalmers, Local Government, p. 43.
[5] 5 & 6 Vic. c. 109.
[6] See 41 & 42 Vic. c. 49 and c. 77, and 5 & 6 Wm. IV, c. 50.
[7] 25 & 26 Vic. c. 61 and 27 & 28 Vic. c. 101.

of each petty sessional division must within the last seven days of September hold a court of special sessions for revising and allowing the lists of persons liable to serve on juries within their division.[1] The justices of each petty sessional division must hold four special sessions each year to hear appeals against the poor-rates of the different parishes within the division.[2] The justices, in their courts of special sessions, are further the general licensing authority for all those trades for the pursuit of which the law requires a license. Thus, by 9 George IV, c. 61, there is held in every petty sessional division an annual licensing meeting, at which licenses for the sale of intoxicating drinks are issued. Under the present law[3] such licenses must be confirmed by the confirmation committee of the quarter sessions or by the borough confirmation committee. The sale of gunpowder, also, must be licensed;[4] and so must theatres and the like. In all these cases the licenses are issued by the justices in special sessions.[5]

The above examples indicate the numerous powers exercised by the justices of the peace, in petty and special sessions, relative to the actual administration of the country. The enumeration is by no means exhaustive.

2. *Quarter Sessions.* We have now to examine the administrative functions discharged by the justices of the peace in their courts of quarter sessions. In the English books on the subject these functions are generally grouped under the title of "county business." They are of two general classes: (1) those relating to the personnel of the county service and (2) those relating rather to the matters of administration than to the personnel.

(1) To the county authority belongs the appointment of almost all the salaried officers of the county. Among these are the county treasurer, whom they dismiss from office in their own discretion and whose salary also they may fix as they see

[1] 6 Geo. IV, c. 50.
[2] 6 & 7 Wm. IV, c. 96, sec. 6.
[3] 35 & 36 Vic. c. 94.
[4] 38 & 39 Vic. c. 17.
[5] See Stone's Practice for Justices of the Peace, *etc.*, at Petty and Special Sessions, 9th edition (1882), pp. 476–499.

fit;[1] the clerk of the peace, who is regularly appointed by the *custos rotulorum*, but may be appointed by the quarter sessions in case the *custos rotulorum* neglects to act;[2] the overseers of the bridges in the county;[3] the inspectors of weights and measures;[4] the chiefs of the salaried constabulary for the county;[5] and the superintendents of the county lunatic asylums.[6] In addition to the appointment and dismissal of the subordinate officers of the county, the quarter sessions has also, in many cases, the right to fix their fees. Among those whose fees are thus determined are the coroner, the justices' clerks, and the unsalaried constables.[7] In most cases, however, the scale of fees must be approved also by the Home Secretary.

(2) As regards the matters of county administration:

(*a*) The quarter sessions have quite an extensive ordinance power. The ordinances issued are, as a rule, supplementary to existing laws. Thus the quarter sessions make by-laws, as they are called, with respect to all highways within any highway area within the county,[8] and regulations for the general conduct of lunatic asylums.[9] In addition to the regulations that the quarter sessions may issue in first instance, they have the power to confirm the by-laws issued by various semi-public corporations: *e.g.*, new savings banks, friendly and loan societies, and improvement commissions.

(*b*) The quarter sessions have general charge of the county finances and property. They have also to provide places for the holding of the courts of the county and lodgings for the travelling justices of the royal courts. Accordingly, they fix the amount of the county taxes, which are tacked upon the poor rate;[10] they issue all orders of payment for county expenses to the county

[1] 43 Eliz. c. 2, sec. 14, c. 3, sec. 7; 55 Geo. III, c. 51, sec. 17.
[2] 37 Henry VIII, c. 1.
[3] 22 Henry VIII, c. 5, sec. 4.
[4] 41 & 42 Vic. c. 49.
[5] 13 & 14 Vic. c. 20, sec. 6; 20 & 21 Vic. c. 2, sec. 2.
[6] 16 & 17 Vic. c. 97.
[7] See 1 Vic. c. 68; 14 & 15 Vic. c. 55, sec. 9–12; 5 & 6 Vic. c. 109, sec. 17; 13 & 14 Vic. c. 20, sec. 2.
[8] 41 & 42 Vic. c. 77, sec. 26.
[9] 16 & 17 Vic. c. 97.
[10] See 8 & 9 Vic. c. 111.

treasurer;[1] they audit the latter officer's accounts;[2] and they decide as to the repairing or building of shire halls — a power which includes the power to purchase lands and to borrow money and pledge the proceeds of the county rates for its payment.[3]

(*c*) The quarter sessions have the power to issue certain kinds of licenses, though the licensing power as a rule belongs to the petty and special sessions. Among the licenses which must be granted in quarter sessions are those for the keeping of private lunatic asylums,[4] and for slaughter-houses.[5] Furthermore, the new licensing act in regard to the sale of intoxicating liquors requires that the licenses issued by the special sessions be confirmed by a committee of the quarter sessions.

(*d*) The quarter sessions has an extensive supervisory power over the actions of the subordinate local authorities. Thus there is a general right of appeal[6] to quarter sessions from the orders of the justices acting either singly or in petty or special sessions, and from the acts of almost all the subordinate local officers in all the branches of the administration. A very wide appeal is allowed in the matter of local taxes, the court of quarter sessions having power to review questions both of fact and of law. In the hearing of these appeals the court of quarter sessions acts in very much the same way as the administrative courts on the continent of Europe.

Enough has been said to show that the justices of the peace form by far the most important part of the old system of local government. The outline of this system, however, is not complete without some reference to the parish. It will be remembered what position this body held before the reform of the poor law (1834), and before the various changes that have been made during the past one hundred and fifty years in the administration of the highways. Through its vestry, its overseers of

[1] 43 Eliz. c. 2, sec. 14.
[2] *Ibid.*, c. 3, sec. 7.
[3] 7 Geo. IV, c. 63.
[4] 8 & 9 Vic. c. 100.
[5] 7 & 8 Vic. c. 87.
[6] It would be a tedious task to collect all the laws which provide for such an appeal; there are more than a hundred of them. The majority of the laws cited in this paper expressly provide for such an appeal. See also Gneist's classification of this kind of appeals in Selfgovernment, S. 386.

the poor and its surveyors of highways, the parish exercised no inconsiderable influence in the local administration. But the Poor Law Amendment act reduced the overseers to the position of mere assessors and collectors of the poor rates, and put them very much under the control of the justices of the peace; and the gradual transformation of the highway administration has left the parish and its immediate officers little to do. The parish is now little more than an election and tax district with officers reduced to a shadow of their old importance. It has indeed obtained a new significance as school district; but as school district it has also a new and different organization.

So much, then, remains of the old system of local government. The justices of the peace preserve most of their old police functions, which still have a very wide meaning and affect even those branches of the administration attended to by the local boards; and when united together in the court of quarter sessions they are still the county authority. The county authority is, as it has been for centuries, unrepresentative in character, — in so far at least as the term representative means representation by election, — and most of the justices are still chosen from a single class, that of the large landholders. But this authority, though technically unrepresentative, actually represents the county as well perhaps as any authority could. As against the central government, the independent position of the justices makes them excellent representatives of the local interest. That they are not elected and that they belong for the most part to the landholding class, are facts which naturally make against them in this democratic century; and the increasingly democratic spirit of English politics has led to the introduction into Parliament of many schemes for their abolition as the county authority or for the introduction into their organization, as such county authority, of a certain number of representatives of the rate-payers.[1] None of these plans, as yet, has obtained any considerable

[1] Many of the reform plans proposed may be found in Local Government and Taxation in the United Kingdom, published by the Cobden Club, p. 89.

support, but the question is one which is mooted at almost every session of Parliament.

The New Boards and the Central Control.

The reasons why this system of local government proved unsatisfactory to the citizens of England after the passage of the Reform bill of 1832 have already been pointed out. One of the chief objections to the old system was that the people were taxed for the poor rates without any elective representation. It was only natural that the main feature of the reform which was introduced by the Poor Law Amendment act of 1834 should be provision for elective boards in those branches of the administration in which the heaviest taxes were levied. All the other changes that were made — *e.g.* the association of neighboring parishes into poor-law "unions"[1] and the introduction of a strong central control — were due to considerations of administrative expediency. The main change was the provision for elected assemblies.

Since the passage of the Poor Law Amendment act, the principle of representation has been introduced into three other branches of the local administration: *viz.*, the sanitary administration, public instruction and the administration of the highways. The members of the elective boards are voted for by the rate-payers, who have, as a general thing, the right to a plural vote. The number of votes varies with the amount of rates paid and runs as high as twelve votes in some cases, when the voter votes both as occupier and as owner. This is the case in the vote for guardians of the poor.[2] In one case, — *viz.*, in the election of members of the school-board — provision is made for minority representation. Each voter has as many votes as there are members to be elected, and may distribute them among the candidates as he sees fit. This rule was adopted in order to secure the repre-

[1] The union of parishes had already been tried in the preceding century with more or less success. See Gilbert act, 1782.

[2] See Poor Law Amendment act, 1834.

sentation of ecclesiastical minorities.[1] In the case of the board of poor-law guardians, it must be kept in mind that the justices residing within the limits of the union are *ex officio* guardians. But they must never comprise more than a third of the entire membership. Hardly any of the later laws provide for these *ex officio* members, and indeed their connection with the board of guardians is not of much importance. They can never wield more than a third of the power and, as has been said, they do not as a rule attend the meetings of the board.

These boards are not always distinct as to personnel; or, rather, there are not as many separate boards as there are subjects of administration. The rural sanitary districts are coincident with the poor-law unions, and the board of guardians in these districts is the sanitary authority. In many cases the highway districts are also coincident with the unions; and in these cases the same board directs all three branches of local government. Such a board, composed of members who serve without pay, does not attempt to attend to the details of administration. It simply administers the finances of the district. The details of administration are delegated to salaried officers. It is the custom of the guardians, permitted by the law, to appoint, for the poor-law administration, "union" relieving and medical officers as well as workhouse masters, chaplains, and schoolmasters; for the sanitary administration, a medical health officer and an inspector of nuisances, together with clerks, a surveyor and a treasurer, all of whom are paid; and for the highways, in case the board of guardians is the highway authority,[2] a treasurer, a clerk, and a surveyor and assistant surveyors.

All of these officers, together with their superiors, the elected boards, are under the strictest control of the new department of

[1] See Elementary Education act, 1870.

[2] The law in regard to this matter of highways, it should be noticed, is still not at all uniform. In some of the parishes of England it is the vestry of the parish with the old surveyor of highways who at the present time attend to this matter, while in others several parishes have been formed into highway districts with a highway board, which in many cases is the board of guardians. See Chalmers, Local Government, pp. 133–6.

the interior at London, the Local Government board, or of the Education department of the Privy Council. The powers of control which these two bodies may exercise are very similar. It is least in the matter of highways, and seems to be confined to the scrutiny and auditing of accounts.[1] In the poor-law administration, the central control includes the sole power of discharging the subordinate officers, the power of examining all the accounts of the guardians and their subordinates and disallowing improper items, and the power of issuing general rules for the guidance of the guardians. In the sanitary administration and in the matter of elementary education, the central authority possesses large powers of compelling the local authorities to introduce the needful institutions for preserving the public health and for assuring educational facilities. A recent writer says:

> Thus, if a local authority makes any default in any matter relating to the sewering or water supply of the district, the [Local Government] board, after due inquiry, may order the local authority to execute the necessary works within a specified time. If the order is not obeyed, it may either be enforced by a writ of *mandamus*, or the board may appoint persons to do the work and recover the expenses from the local authority.[2]

Again, the same author says, in regard to the school administration:

> If the school board make default [*i.e.* in the provision of the necessary school accommodations], the Education department may, after due notice, appoint a committee to act in their place until the requirements of the department have been complied with.[3]

And again:

> If a school-attendance committee[4] make default in the performance of its duties, the Education department may appoint persons for a speci-

[1] We have already seen that the justices of the peace, both in quarter sessions and special sessions, have a considerable control over the opening and discontinuing of roads and over cognate matters.

[2] Chalmers, Local Government, p. 121. Public Health act, 1875.

[3] *Ibid.*, p. 129.

[4] It should be said here, by way of explanation, that if in any place there is no school-board, — which may often be the case if there is sufficient school accommoda-

fied period, not exceeding two years, to perform the duty of the committee. The persons so appointed may be remunerated, and the expense incurred may be recovered from the town council or guardians as the case may be.[1]

From this hasty sketch of the new system of government introduced in local affairs as a result of the great reforms since and including the Poor Law Amendment act of 1834, it will be seen how much the time-honored system of English local government has been modified. Obligatory service has been replaced by voluntaryism; appointed by elected officers; unpaid by salaried service; local autonomy by administrative control; enumeration by law of the duties of local officers by central instructions. Indeed the new system presents a centralization such as is not excelled in any of the countries of Europe.

The Municipalities.

In conclusion a word or two must be said in regard to the position of the English municipalities. The municipalities are of two classes: the municipal boroughs and the local government districts. Of the latter class, the most important are the urban sanitary districts. The law governing the former class is the Municipal Corporations act of 1882. Under this law, the town authority is the municipal or borough council. This is elected by the burgesses of the borough, the suffrage being subject to a property qualification. In the local government districts the local authority is the board of health or, in those districts not governed by the general act but rejoicing in special charters, a board of improvement commissioners. These boards are elected on somewhat the same principles as the borough council. The main purpose of the existence of a municipality is the care of its own peculiar concerns and it has little to do with the general administration of the country.

tion in the place without the formation of any board-schools, — a committee of the board of guardians acts in place of the school-board in enforcing the provisions of the act relative to the compulsory attendance at school of the children within the district.

[1] Chalmers, Local Government, p. 131. Elementary Education acts.

Thus in every borough we find the parish existing with almost the same duties and the same officers as in the rural localities, and the law in regard to public charities is about the same for the municipalities as for the country, the only important exception being the metropolis — which is, it should be noted, an exception to almost all rules. The guardians have the same jurisdiction in the municipalities as in the rural localities. This general statement, however, requires qualification: various acts, *e.g.* the Public Health act and the Highway acts, make the town council and the local board the local authority for sanitary and highway purposes. In these matters of general administration the central authorities have about the same rights of supervision over the municipal as over the rural authorities. The justices — when there are justices — have about the same jurisdiction in the municipalities as in the country at large, with the exception of those boroughs which do not contribute to the county rate. In the municipalities, the justices have been replaced — and may be replaced in all localities which have an aggregation of inhabitants of over twenty-five thousand — by stipendiary magistrates. These officers have about the same functions to discharge as the country justices, with the exception of attending and acting in the courts of special and quarter sessions, and they receive a salary, which, it will be remembered, is not the case with the country justices. In their police courts these stipendiary magistrates, even when sitting alone, may do any act and exercise any jurisdiction which may be done or exercised by two or more ordinary justices.[1] In the urban sanitary districts, in addition to the simple powers of sanitary administration, the local boards have, by the Public Health acts, very large powers of local government, in fact about the same as those of the boroughs, with perhaps the exception of the control of the police force, which in these districts is a part of the county police and is under the control of the justices.

Though the principle of enumerating by law the powers of the municipalities has been adopted in England, as in this coun-

[1] Wigram, Justices' Note Book, p. 6.

try; and though the rule that no municipality may do anything for which it has not received special authority by law has the same force as here; still the laws which have been passed on this subject grant very much larger powers to the English municipalities than are commonly conferred upon the municipalities in this country. Nearly all the municipalities may establish and run gas works, and very many may erect and operate at their own risk artisans' dwellings and lodging houses,[1] subject simply to the administrative control of the central executive authorities at London in regard to the amount of money to be expended and debt to be contracted.

Such is the condition of English local government at the present time. No attempt has been made to secure any symmetry in its form or regularity in its action. As new needs have made themselves felt, new authorities have been created for their satisfaction; so that in some districts there are as many as thirty-five authorities, some of which are elected, some of which are appointed, and many of which have the power of levying taxes.[2] There has been no attempt to make the areas of government coincide, save that the rural parish has been taken as the school district and that the union has been formed out of so many parishes. Otherwise the boundaries of the various districts overlap one another on every side. A parish may be in two counties and a borough in two unions. The elections of the various local authorities do not all take place at the same time, and the methods of voting for different officers are frequently different. No attempt is made to have any general budget drawn up, showing the expenses of a given locality. The result is, of course, great extravagance and want of knowledge of local conditions.

What reforms are necessary it is difficult to indicate. It certainly seems useless to attempt particular improvements in the present complex system. A reorganization of the whole machinery of local government seems to be required. For such a

[1] See Artisans' Lodging and Dwelling Houses acts.

[2] See Chalmers, Local Government, pp. 17, 18.

reorganization the new system adopted by Prussia might well serve as a model. The new Prussian system combines symmetry of form with ease of action; it preserves sufficient central control to insure harmony and uniformity, and yet grants large powers of local autonomy; and, while it makes provision for professional and salaried service, it is not based on voluntaryism but imposes the performance of official duties on vast numbers of private citizens. Some such system of local government England must soon adopt; else her people, from lack of participation in administrative duties, will lose much of that political capacity which has made her famous self-government possible, and the conduct of all public affairs will fall into the hands of a centralized bureaucracy.

FRANK J. GOODNOW.